

WISCONSIN SUPREME COURT CALENDAR

December 10, 2001

10:45 a.m.

00-1397 Ricky Stephenson et al. v. Universal Metrics, Inc. et al.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed an order of the Milwaukee County Circuit Court, Judge Victor Manian presiding.

In this case, the Wisconsin Supreme Court will decide whether an employee at an employer-sponsored Christmas party had a duty to drive an intoxicated co-worker home when he told the bartender he would.

Here is the background: Universal Metrics, Inc. (UM) sponsored a Christmas party for its employees at the Silver Spring Country Club in Menomonee Falls. Michael Devine, one of the company's employees, became very drunk and eventually drove himself home and collided with another car. Both Devine and Kathy Stephenson, the woman driving the other car, were killed.

At the inquest into the two deaths, the Silver Spring bartender testified that she was concerned about Devine's drinking and that she had expressed this concern to UM employees at the party. She testified that employee James Kreuser told her, "Don't worry. I'll give him a ride. I promise I'll give him a ride home." Kreuser disputes this version of the story, saying that he simply nodded his head when the bartender asked if someone would give Devine a ride home. Nonetheless, he has conceded that the promise was made. Kreuser and his wife, however, left the party without Devine.

Stephenson's husband sued UM and Kreuser, but the circuit court dismissed the case against UM, finding that the company had immunity from the lawsuit. The judge allowed the lawsuit against Kreuser to proceed, and the Court of Appeals agreed with that decision.

On this appeal, Kreuser argues that he should not be held liable for the accident. He claims that the Wisconsin law that protects people who serve alcohol (by giving them immunity from lawsuits related to problems that the drinking may cause) should apply in this situation. The law reads as follows:

Wisconsin Statutes Section 125.035 (2)

A person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing or giving away alcohol beverages to another person.

The Court of Appeals, however, read this statute to apply only to a person who furnishes alcohol for another person – not to an individual who has voluntarily made a promise to be a designated driver.

Kreuser maintains that the Court of Appeals' decision – if allowed to stand – may "utterly destroy budding designated driver programs in this state, because designated drivers may fear liability for inadequately performing or failing to perform their voluntary duty." In addition, he points out the irony that bartenders and drinking buddies

who encourage a person to get drunk could be immune from liability under the statute cited above, but a designated driver who fails to perform his duty could be liable.

The Supreme Court will decide whether a person who volunteers to be a designated driver and then does not fulfill this promise may be held liable for the damages caused by a drunken driver.